REMARKS

Claims 6-25 are pending in the application.

Applicant cancelled Claims 1-5 without prejudice or waiver of the subject matter described in Claims 1-5. Applicant reserves the right to represent either Claims 1-5 or the subject matter described therein in this application or any later filed application based upon or arising from this application or any patent issued therefrom. Accordingly, cancellation of Claims 1-5 neither constitutes a waiver of the subject matter described in Claims 1-5 nor a limitation upon the doctrine of equivalents.

Applicant added no new matter to the application.

Applicant requests reconsideration of the pending application in view of the new Claims 6-25 and the following remarks.

CLAIM REJECTIONS UNDER 35 USC §§ 101-103

The office action, on page 2, rejected Claim 5 under 35 U.S.C. 101. The rejection asserts that Claim 5 is directed to non-statutory subject matter. Applicant cancelled Claim 5 thereby rendering the rejection moot.

The office action, on page 2, asserts that Claims 1-3 and 5 are anticipated by Riordan (EP 1 227 386). Applicant cancelled Claims 1-3 and 5, thereby rendering these rejections moot.

The office action, on page 4, asserts that Claim 4 is unpatentable over Riordan (EP 1 227 386) in view of known prior art. Applicant cancelled Claim 4, thereby rendering this rejection moot.

OFFICIAL NOTICE

A.   Stated Official Notice, item 13 on page 4 of office action:

Applicant traverses the taking of official notice as described in the office action, on page 4, item 13. In the office action, the Examiner took official notice "that it would have been obvious to one of ordinary skill in the art at the time of the

invention to include the source address in the identifier key because the source address is unique and thus helps to exclude unauthorized users."

Official notice of a conclusion of obviousness is improper because the Examiner improperly took official notice of non-factual matters. The official notice specifically states that "<u>it would have been obvious to one of ordinary skill in the art at the time of the invention</u> to include the source address in the identification key because the source address is unique and thus helps to exclude unauthorized users," which is a conclusion of law and not a fact. Thus, the office notice fails to comply with the requirement of MPEP § 2144.03. Accordingly, the office notice is improper and Applicant respectfully requests withdrawal of the official notice regarding the conclusion of law reached by the Examiner.

MPEP § 2163.04 states that "Official notice unsupported by documentary evidence should only be taken by the examiner where the **facts** asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." (Emphasis added).

"Any rejection based on assertions that <u>a fact is well-known or is common knowledge</u> in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. Furthermore, ... any facts so noticed should be of notorious character and serve only to "<u>fill in the gaps</u>" in an <u>insubstantial manner</u> which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. <u>It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based</u>." MPEP § 2144.03 (*citing* In re *Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092 (CCPA 1970).)

In paragraph 13, the office action is unclear as to what fact the Examiner desired to assert is well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. MPEP § 2144.03 requires that the official notice be <u>clear</u>. Furthermore, the official notice must present the Applicant with the "the explicit basis on which the examiner regards

the matter as subject to official notice" to provide the Applicant with an adequate opportunity to rebut any facts asserted by official notice.

Because the office action improperly took official notice of a conclusion of law, the office action is unclear. Accordingly, Applicant requests that the Examiner please clarify the official notice to clearly identify those facts asserted to be <u>well-known or common knowledge</u> in the art, and thereby provide Applicant an adequate opportunity to rebut the assertion of official notice.

Furthermore, Applicant is unaware of any prior art teaching or suggestion that supports the conclusion asserted by the official notice in the office action. Thus, Applicant further request that the Examiner produce authority for each of the Examiner's statements in the paragraphs identified in paragraphs 13 on page 4 of the office action. To maintain any rejection of any of the pending claims based upon the assertions made in the taking of the official notice, the Examiner must produce authoritative documentary evidence in the next office action to support each contention made regarding the taking of official notice. *See*, MPEP § 2163.04. In particular, the Examiner "<u>must point to some concrete evidence in the record in support of these findings</u>" to satisfy the substantial evidence test." (citation omitted). *See*, id. "If the Examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding." *See*, id. (*citing* 37 CFR 1.104(d)(2).)

For at least these reasons, Applicant respectfully requests withdrawal of the official notice.

B.   Item 12 on page 4 of office action:

1.   Applicant traverses assertion that is it well known in the art to use a source address to help identify a provider of a software program.

Although the office action does not so state, the office action may have intended to take official notice of the statement that "It is known in the art to <u>use the source address to help identify the provider</u> [of a software program] because the source address is unique."

Applicant traverses the statement on page 4, item 12, that "It is known in the art to use the source address to help identify the provider [of a software program] because the source address is unique."

First, Applicant is unaware of any prior art teaching or suggestion that supports the facts asserted by the official notice in the office action. Accordingly, Applicant further request that the Examiner produce authority for each of the Examiner's statements in the paragraphs identified in paragraphs 13 on page 4 of the office action.

Second, Applicant submits that Roirdan teaches away from the asserted fact. Roirdan, paragraph [0032], describes that "an additional program-specific identifier which is signed by the private cryptographic key is sent within the message." However, a program-specific identifier required to be signed by a private cryptographic key teaches away from the use of a source address.

It is well known in the cryptographic art that transmission of known "plain text" encrypted using a private cryptographic key undermines the security of the private cryptographic key and the encryption/decryption system as a whole. According, encryption of a unique source address, as suggested in the office action, would be inconsistent with signing the identifier with a private cryptographic key because the source address would be known "plain text." Thus, the use of the source address would undermine the security of the private cryptographic key and the encryption/decryption system.

Furthermore, Roirdan teaches "trust" between two programs depends upon use of the private key. Thus, Roirdan teaches that a non-encrypted unique source address, from which a program is downloaded/received in the clear (without encryption), would destroy trust between programs. Accordingly, Roirdan teaches away from the use of a source address from which a program is received/downloaded and the asserted facts.

Moreover, in the context of the pending claims, Applicant is unaware of any prior art teaching or suggestion that supports the asserted fact. And, Applicant submits that the sole reference relied upon in the office action contradicts the

rational of the asserted facts. Thus, Applicant requests that the Examiner please clarify the official notice to clearly identify those facts asserted to be <u>well-known or common knowledge</u> in the art, and thereby provide Applicant an adequate opportunity to rebut the assertion of official notice.

2.   Applicant traverses assertion "Roirdan seems to provide support for including the source address in the identifier."

First, it is axiomatic that a message sent between two programs is not the same as permitting a first program to access data associated with a second program. Second, as addressed above, Roirdan teaches away from the above asserted facts because signing a unique source address with a private cryptographic key would undermine the security of the key and the encryption/decryption system.

Applicant further traverses the statement that Roirdan, "paragraph 32 <u>seems to provide support for including the source address in the identifier</u>." While the office action does not explicitly state an argument based on inherency, the office action appears to argue that use of a source address in the identifier is inherent.

MPEP § 2163.07 requires that "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter <u>is necessarily present in the thing described in the reference</u>, and that it would be so recognized by persons of ordinary skill. ...Inherency ...may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *See, id.* (*citing In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). (Emphasis added).

"In relying upon the theory of inherency, the <u>examiner must provide</u> a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art." *Ex parte Levy,* 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original); MPEP § 2112, IV; *see, also, KSR International Co.,* 82 USPQ2d 1385, 1396 (U.S. 2007). Applicant respectfully submits that the office action failed to establish that "the <u>missing descriptive matter is necessarily present</u>

in the thing described in the reference, and that it would be so recognized by a person of ordinary skill." *See*, MPEP § 2163.07.

Although Roirdan describes "an additional program-specific identifier which is signed <u>by the private cryptographic key</u> is sent within the message," the Examiner has not provided a basis in fact and/or technical reasoning to support the determination that the program-specific identifier is a source address.

To the contrary, Roirdan describes that the additional program-specific identifier should be "signed by the private cryptographic key sent within the message." As discussed above, requiring the program-specific identifier to be a unique source address, as asserted in the office action, would undermine the security of the cryptographic system. Thus, contrary to the assertion of the office action, Roirdian teaches away from use of a source address in a program-specific identifier.

For at least these reasons, Applicant requests that the Examiner provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art.

Claims 6-13.

New Claim 6 describes the limitations of "in response to a request from the first program executed on the processor to access the data associated with the second program, the processor further configured <u>to determine whether the first communication address matches the second communication address</u>." Claim 6 further describes the limitations of "the processor further configured to permit the first program to access the data associated with the second program based upon determination that the first communication address matches the second communication address."

In contrast, Riordan describes exchanging a message between program S and D. Specifically, as described in Riordan, paragraph [0023], "A message originator program [D] sends a message including <u>its [D's] derived name</u> to a message-receiver

program." "The name is provided by [D's] the operating system and might be added to the message during sending or transferring. After receiving the message, the name is verified whether it is known to the message-receiver program and/or the trusted computing base. By doing so, the message that may include a special request can be accepted or rejected depending on the verification. For a response to the message, the message-receiver program [S] converts to a so-called response-message-originator program, i.e. the message-receiver program [S] becomes a message originator program, and sends a message-response with its [S's] specific name." Accordingly, Riordan describes that the program sending a message sends its own identifier rather than the identifier of the receiving program.

Furthermore, as described in Riordan, paragraph [0022], "The basic idea of the invention is that a computer uses cryptographic functions, i.e. cryptographic checksums, also referred to as one-way-hash functions, to automatically generate program-specific cryptographic identifiers or short program-specific identifiers and form therewith the basis of an access control mechanism." A cryptographic checksum is not the same as "a first address of a first server from which the second program was downloaded" or "a second address of a second server from which the second program was downloaded," as described in Claim 6.

Riordan also fails to teach or suggest the limitations of "the processor further configured to permit the first program to access the data associated with the second program based upon determination that the first communication address of the first server matches the second communication address of the second server," as described in Claim 6.

Accordingly, Riordan fails to teach or suggest each and every limitation of Claim 6. Therefore, Applicant requests examination and allowance of Claim 6 and the claims dependent thereupon.

Claims 14-18.

Claim 14 describes the limitations of "executing the first program stored in memory, wherein the first program requests to access data associated with a second

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program, wherein said data resides in a portion of the memory allocated to the second program, and wherein the second program is associated with a second provider identifier," which Riordan fails to teach or suggest.

Claim 14 further describes the limitations of "in response to the request of the first program to access the data associated with the second program, the processor determining whether the first provider identifier of the first program matches the second provider identifier associated of the second program," which Riordan also fails to teach or suggest.

Additionally, Claim 14 describes that "in response to determination that the first provider identifier matches the second provider identifier, the processor permitting the first program to access the data resident in the portion of the memory allocated to the second program," which Riordan also fails to teach or suggest.

Accordingly, Riordan fails to teach or suggest each and every limitation of Claim 14. Therefore, Applicant requests examination and allowance of Claim 14 and the claims dependent thereupon.

Claims 19-25.

Claim 19 describes the limitations of "computer code stored on a computer readable memory, the computer code executable on the processor to store a first communication address of a first server from which the first program was downloaded, wherein the first communication address is associated with the first program" and "in response to a request to allow the first program to access the data stored in the memory, wherein the data is associated with a second program, to determine whether the first communication address associated the first program matches a second communication address associated with the second program," which are neither taught nor suggested by Riordan.

Claim 19 further describes the limitations of "computer code executable on the processor to permit the first program to access the data of the second program based upon determination that the first communication address matches the second communication address," which is also neither taught nor suggested by Riordan.

Accordingly, Riordan fails to teach or suggest each and every limitation of Claim 19. Therefore, Applicant requests examination and allowance of Claim 19 and the claims dependent thereupon.

CONCLUSION

Applicant believes the application to be in condition for allowance, which Applicant earnestly requests. Applicant invites the Examiner to contact the undersigned attorney for the Applicant via telephone if such communication would expedite examination or allowance of this application.

Respectfully submitted,

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Sanders N. Hillis, Reg. No. 45,712
Attorney for Applicant

BRINKS HOFER GILSON & LIONE
(317) 636-0886